IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 1505 (SS) of 2003

Rakesh Lal,
S/o Sri Jaspal Lal,
R/o Jhirkoti,
Post Office- Shanti Sadan,
Police Station- Karanprayag,
District- Chamoli (Garhwal). **…….Petitioner**

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Commandant, Assam Rifles, Training Centre, and School, P.O. – Dimapur (Nagaland) 797 115.
3. Director General, Assam Rifles, Shilong.

…….Respondents

Hon'ble M.M. Ghildiyal, J

Heard Sri Ajay Singh Bisht, holding brief of Sri V.B.S. Negi, learned counsel for the petitioner and learned standing counsel for Union of India on behalf of respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

1. *issue a writ, order or direction in the nature of Certiorari to quash the order dated 15.09.2003 filed as Annexure no. 4 passed by the respondent no. 2.*
2. *issue a writ order or direction in the nature of Mandamus directing the respondents to pay the disability pension to the petitioner month to month.*
3. *issue any suitable writ, order or direction in the nature of which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

4. *award the cost of the writ petition in favour of petitioner.*

The stand taken by the petitioner is that he was enrolled in Assam Rifles on 27.05.2001. On 31.08.2001 all of sudden petitioner was discharged from the service on medical ground. On 18.08.2002 Assistant Commandant / Training Officer wrote a letter to the petitioner that the Director General has approved his disability pension on medical ground and advised to report at Assam Rifles, Training Centre and School, Dimapur, (Nagaland) along with necessary documents for signing the pension claim.

Again Assistant Commandant/ Training Officer, on 31.10.2002 directed the petitioner to report Assam Rifles, Training Centre and School, Dimapur, Nagaland along with relevant documents for signing pension papers. However, vide order dated 15.09.2003 the Assistant Commandant / Training Officer, Assam Rifles, Training Centre and School, Dimapur, (Nagaland) has informed the petitioner that his case has been examined thoroughly and as per medical board proceedings, it was seen during confirmatory medical examination petitioner was found unfit due to (i) bow legs ICD 77 cms and (ii) flat foot (RT). He was again referred to 165, Military Hospital on 28.06.2001 and was again found unfit. Moreover, the disease is not connected with service and percentage of disability is nil. Neither the disease is attributable nor aggravated due to Assam Rifles services, as such, petitioner is not entitled for any disability pension as per CCS (EDP) Pension Rules.

Feeling aggrieved with this order, petitioner has filed present writ petition.

Respondents have filed counter affidavit. In para 11 of the counter affidavit, respondents have submitted that petitioner was enrolled in Assam Rifles on 27.05.2001 at Rudraprayag Rally. Due to large number of candidates at the recruitment rallies and attendance of only single medical officer, preliminary medical examination conducted at the rally site is cursory and was to be followed by Confirmatory Medical Examination. Confirmatory Medical Examination is conducted subsequently on reporting of a recruit (Provisional appointment) as Assam Rifles, Training Centre of School, Dimapur. It is further submitted that in term of Appendix E to this Directorate Letter No. A/I-SOP/4-97 dated 03.10.1997, the appointment is subject to their being medically fit at the medical examination conducted at Assam Rifles, Training Centre and School, Dimapur prior to the commencement of recruit training. That on reporting at Assam Rifles, Training Centre and School, Dimapur prior to commencement of training the petitioner was put through the mandatory confirmatory medical examination and found unfit.

In para 14 of the counter affidavit, respondents have submitted that officiating Commandant of No. 3 Training, Battalion, Assam Rifles, Training Centre and School, Dimapur, vide letter dated 15.09.2003 intimated the petitioner that his disability was neither attributable nor aggravated by the service conditions and since his disability was nil, he was not entitled to get disability pension. He was further intimated that letter dated 18.08.2002 was inadvertently issued and it was bonafide mistake which was subsequently, corrected vide letter dated 1.240022(A)/2002-Trg/3445 dated 15.09.2003.

It is not disputed that the petitioner was enrolled in Assam Rifles on 27.05.2001. This recruitment was made in term of Directorate Letter dated 03.10.1997, according to which the appointment of the candidates is subject to their being medically fit at the medical examination conducted at Assam Rifles, Training Centre and School, Dimapur prior to the commencement of recruit training and on reporting at Assam Rifles, Training Centre and School, Dimapur prior to commencement of training the petitioner was put through the mandatory confirmatory medical examination and found unfit. Again the petitioner was sent to 165, Military Hospital, for medical examination and was found unfit. It was also found by the medical board that the disease is neither attributable nor aggravated due to service and disability was also found nil.

In view of the above circumstances, I do not find any merit in the writ petition. Accordingly writ petition is dismissed. Stay application no. nil of 2003 is rejected.

(M.M. Ghildiyal, J)

March 6, 2007
Sksharma.